

Message Text

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DRAFTED BY EA/ANP:TJWAJDA:RLW
APPROVED BY EA:RBOAKLEY
EA/ANP:EHURWITZ
EB:WBLACK
L/EB:SBENSON (INFO)
-----098346 231125Z /23
R 230042Z MAR 78
FM SECSTATE WASHDC
TO AMEMBASSY CANBERRA

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E.O. 11652: GDS

TAGS: EINV, AS

SUBJECT: DILLINGHAM CLAIM

1. EA DEPUTY ASSISTANT SECRETARY OAKLEY MET WITH DILLINGHAM VICE PRESIDENT ED CARTER AND DILLINGHAM'S LAWYERS MIKE BRADFIELD AND DAVID GANTZ MARCH 21. CARTER AND BRADFIELD REVIEWED OVERALL SITUATION, PARTICULARLY FRUITLESS FEBRUARY 28 MEETING WITH DEPUTY PRIME MINISTER ANTHONY. CARTER WAS EFFUSIVE IN HIS PRAISE FOR ASSISTANCE GIVEN DILLINGHAM BY DEPARTMENT AND EMBASSY CANBERRA.
2. CASTING ABOUT FOR NEW ANGLE OF APPROACH, BRADFIELD NOTED ANTHONY HAD SUGGESTED DILLINGHAM MIGHT WANT TO BRING SUIT AGAINST GOA IF IT WAS NOT SATISFIED WITH DOLLARS 4 MILLION EX GRATIA PAYMENT. BRADFIELD SAID DILLINGHAM WAS RELUCTANT TO BRING CASE TO AUSTRALIAN COURTS AS ITS CONFIDENTIAL

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BEST ADVICE WAS THAT UNDER AUSTRALIAN LAW, GOA IS NOT REQUIRED TO PAY COMPENSATION FOR INDIRECT TAKINGS. HOWEVER, IF GOA WOULD STIPULATE ITS LIABILITY TO PAY COMPENSATION, DILLINGHAM WOULD BE HAPPY TO ALLOW AUSTRALIAN COURTS TO DETERMINE AMOUNT OF COMPENSATION IF THAT COULD BE ARRANGED. ABSENT SUCH A STIPULATION, DILLINGHAM FEARS IT WILL GET NOWHERE IN COURTS AND THAT GOA MIGHT WITHDRAW OFFER OF

EX GRATIA PAYMENT WHEN FACED WITH SUIT.

3. OAKLEY SAID THAT IF SUIT COULD BE BROUGHT IN AUSTRALIA, IT MIGHT BE LEAST POLITICALLY TROUBLESOME WAY FOR GOA TO RESOLVE IMPASSE. THERE MIGHT BE MERIT IN USG MAKING ANOTHER APPROACH TO GOA ALONG THIS LINE, REFERRING TO ANTHONY'S COMMENT. HE ADDED, HOWEVER, THAT DEPARTMENT WOULD WANT TO STUDY THE ISSUE CLOSELY BEFORE DECIDING ON HOW TO PROCEED.

4. POSSIBILITY OF VICE PRESIDENT RAISING DILLINGHAM WITH PM FRASER WAS DISCUSSED AT SOME LENGTH. BRADFIELD EMPHASIZED THAT DILLINGHAM'S CONCEPT WAS TO HAVE ISSUE RAISED IN A RELAXED "BY THE WAY" MANNER AT A TIME WHEN FRASER AND VICE PRESIDENT WERE ALONE. OAKLEY SAID VICE PRESIDENT WOULD HAVE TO MAKE HIS OWN DECISION ON THIS. HIS PERSONAL OPINION WAS THAT VICE PRESIDENT WOULD NOT WANT TO BRING IT UP BECAUSE OF PRECEDENTIAL NATURE IT MIGHT HAVE FOR PROBLEMS OF OTHER COMPANIES IN OTHER COUNTRIES. HE PROMISED DILLINGHAM REPS THAT VICE PRESIDENT'S BRIEFING MATERIAL WOULD INCLUDE DILLINGHAM ISSUE. HE ALSO INDICATED THAT STATE DEPARTMENT WOULD MAKE ANOTHER APPROACH TO GOA ON DILLINGHAM PRIOR TO VICE PRESIDENT'S VISIT, WITHOUT EXPLICITLY LINKING THE TWO. THE VICE PRESIDENT MIGHT WISH TO COMMENT IN GENERAL TERMS ABOUT THE IMPORTANCE OF A GOOD INVESTMENT CLIMATE. VANCE
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Status: NATIVE
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